

Message Text

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E.O. 11652: N/A

TAGS: CARR (REPELL, STEVEN H.) ETRD, BEXP, JA
SUBJECT: REMPELL CASE

REF: (A) STATE 214221; (B) TOKYO 15072

1. SUMMARY: EMBASSY BELIEVES IT MISLEADING TO VIEW REMPELL AS HELPLESS VICTIM OF VINDICTIVE GOJ JUDICIAL SYSTEM, OR INTERPRET REMPELL CASE AS INDICATIVE OF GOJ ATTITUDE TOWARD IMPORTS. ISSUE IN THE REMPELL CASE IS WHETHER THERE WAS ILLEGAL TRANSFER PRICING UNDER THE GUISE OF PARALLEL IMPORTING.

2. REMPELL IS A UNIQUE CASE AND NOT INDICATIVE OF ANY WIDESPREAD DISCRIMINATION AGAINST SMALL BUSINESSMEN CHALLENGING ENTRENCHED EXCLUSIVE AGENT SYSTEM IN LUCRATIVE LUXURY IMPORT MARKET. GOJ FINANCE MINISTRY LIBERALIZED EXCLUSIVE AGENT SYSTEM IN OCTOBER 1972 TO PERMIT "PARALLEL IMPORTING" OF BRAND NAME PRODUCTS BY THOSE OTHER THAN THE EXCLUSIVE AGENT. SINCE THAT TIME GOJ CUSTOMS HAS ACTED TO CURB ABUSES OF THE SYSTEM BUT HAS NOT RETREATED FROM 1972 LIBERALIZATION.

3. REMPELL IS CHARGED WITH INVOICE FRAUD AND VIOLATIONS OF THE FOREIGN CURRENCY CONTROL LAW. THE PROSECUTION
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CHARGES REMPELL WITH ESTABLISHING A PAPER COMPANY IN HONG KONG TO SHIP LIQUOR TO REMPELL'S TOKYO COMPANY AT LESS THAN PURCHASE PRICE TO ESCAPE JAPANESE IMPORT DUTIES. THE LOWER INVOICE VALUE RESULTED IN LOWER CUSTOMS ASSESSMENTS AND THEREFORE LOWER COSTS. REMPELL USED HIS LOWER COSTS TO LEVERAGE MARKET ACCESS IN THE HIGHLY PROFITABLE JAPANESE WHOLESALE LIQUOR TRADE DOMINATED BY LARGE

EXCLUSIVE AGENTS OF HIGHLY MARKED UP IMPORTED BRANDS.

4. THE TRADE ISSUE INVOLVED IS NOT PARALLEL IMPORTING BUT TRANSFER PRICING; WERE THERE ILLEGALLY UNDERVALUED INVOICES AND SUBSEQUENT ILLEGAL REBATES TO THE PAPER COMPANY IN HONG KONG TO COVER THE LOSS? TRANSFER PRICING BETWEEN RELATED COMPANIES PRESENTS A DIFFICULT VALUATION PROBLEM FOR CUSTOMS AGENTS AND COMPANIES. THERE IS A FINE LINE BETWEEN GOOD BUSINESS AND FALSE INVOICING TO EVADE TAXATION.

5. REMPELL'S DEFENSE, AS EXPOUNDED IN THE MEDIA, HAS BEEN: 1) HE DID NOT ENGAGE IN ILLEGAL TRANSFER PRICING, 2) HIS UNDERVALUATION OF INVOICES AND REBATES TO HONG KONG PAPER COMPANIES IS NOT ILLEGAL BECAUSE DUMPING IS NOT ILLEGAL IN JAPAN AND REBATES ARE NOT ILLEGAL IN HONG KONG. 3) ALL COMPANIES INVOLVED IN THE LUCRATIVE LUXURY GOODS IMPORT MARKET IN JAPAN ENGAGE IN ILLEGAL TRANSFER PRICING; THE SMALL IMPORTERS UNDERVALUE INVOICES TO REDUCE LANDED COSTS, AND THE LARGE EXCLUSIVE AGENTS OVERVALUE INVOICES TO SHOW OFF-SHORE LOW TAX PROFITS, AND 4) HE IS BEING PROSECUTED FOR POLITICAL REASONS: SPECIFICALLY BECAUSE HE DARED TO CHALLENGE THE EXCLUSIVE AGENT SYSTEM, AND MORE BROADLY BECAUSE OF THE JAPANESE GOVERNMENT'S CONTINUED RESTRICTIVE ATTITUDE TOWARD IMPORTS.

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6. THE VERDICT IN THE REMPELL CASE, WHEN IT IS ANNOUNCED IN FEBRUARY 1979, WILL PROBABLY REFLECT THE OPINION OF THE COURT IN THE NARROW ISSUE OF ILLEGAL TRANSFER PRICING, FALSE INVOICING TO EVADE CUSTOMS DUTIES, AND REBATES TO HONG KONG ARE ILLEGAL UNDER THE FOREIGN CURRENCY CONTROL LAW. THE COURT IS NOT LIKELY TO ADDRESS THE OTHER ISSUES REMPELL AND HIS ATTORNEYS HAVE RAISED. THE PRESIDING JUDGE'S ANNOUNCEMENT THAT THE COURT DECISION WOULD NOT BE HANDED DOWN FOR SEVEN MONTHS IS INDICATIVE OF THE COURT'S INTEREST IN HANDLING REMPELL'S CASE STRICTLY IN ACCORDANCE WITH NORMAL PROCEDURE.

7. REMPELL'S CLAIMS OF WIDESPREAD INVOICE FRAUD AND POLITICAL RETRIBUTION, WHILE PROVOCATIVE, ARE NOT GERMANE TO REMPELL'S TRIAL. THE EXTENT TO WHICH IMPORTERS ENGAGE IN FALSE INVOICING AND THEIR PROSECUTION BY JAPANESE CUSTOMS IS NOT THE SUBJECT OF THIS CASE. BUSINESS SOURCES NOTE THAT INVOICE VALUATION IS OFTEN NEGOTIATED, BUT RECOURSE TO JUDICIAL PROSECUTION WHEN AN IMPORTER FAILS TO USE A NEGOTIATED VALUATION IS EXTREMELY RARE. REMPELL AND HIS ATTORNEYS SEEM TO HAVE STEERED THE CASE TOWARD PROTRACTED LITIGATION RATHER THAN SETTLE THE

MATTER THROUGH ADMINISTRATIVE PROCEDURE.

8. REMPELL'S CLAIMS OF POLITICAL RETRIBUTION ARE ALSO
SUSPECT. THE 1972 LIBERALIZATION OF THE INTERPRETATION OF

ARTICLE 21 OF THE CUSTOMS TARIFF LAW ESTABLISHED PARALLEL
IMPORTING AS A LEGITIMATE PROCEDURE. EMBASSY IS NOT AWARE

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OF ANY FINANCE MINISTRY OR CUSTOMS OFFICE RETRENCHMENT ON
THE MORE LIBERAL INTERPRETATION. HAD THE JAPANESE
GOVERNMENT REVERTED TO A MORE RESTRICTIVE INTERPRETATION
OF ARTICLE 21, THE EFFECT WOULD HAVE BEEN TO SHUT DOWN
ALL PARALLEL IMPORTING, NOT JUST THE ISOLATED REMPELL CASE.

9. PRESS REPORTS WHICH FIND THE REMPELL CASE INDICATIVE
OF JAPANESE GOVERNMENT SUPPORT FOR BIG BUSINESS DOMINATION
OF THE IMPORT SYSTEM IGNORE THE CURRENT POLITICAL
CLIMATE. IF POLITICAL PRESSURE WERE POSSIBLE IN THIS
CASE, IT WOULD BE BROUGHT TO BEAR TO CLOSE THE CASE AS
QUIETLY AND QUICKLY AS POSSIBLE. ALLEGATIONS THAT
REMPPELL'S COMPETITORS HAVE CONSPIRED WITH THE FINANCE
MINISTRY, CUSTOMS OFFICE, AND COURTS TO MAKE AN EXAMPLE
OF REMPELL CAN NOT BE SUBSTANTIATED. MANSFIELD

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